REMARKS

In the Office Action mailed January 18, 2008, the Examiner rejected claims 1-22 and 47-61 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner rejected claims 1-22, 47-50 and 54 under 35 U.S.C. 102(b) as being anticipated by Hack (KR20010069765). In addition, the Examiner rejected claims 1-22, 47-52, 54-59 and 61 as being anticipated by Donhowe (U.S. 2003/0134007). The Examiner further rejected claims 51-53 under 35 U.S.C. 103(a) as being unpatentable over Hack and claims 53 and 60 as being unpatentable over Donhowe.

By this paper, claims 1, 5, 6, 8, 9, 12, 16-21, 47, 48, 50-53 and 56-59 have been amended to more particularly point out and distinctly claim the novel and unobvious subject matter of the present invention. In addition, claims 7, 10, 11, 15, 54, 60, and 61 have been canceled, without prejudice, and claims 62-64 has been added. For the reasons set forth below, claims 1-6, 8, 9, 12-14, 16-22, 47-53, 55-59 and 62-64 are believed to be in condition for immediate allowance. Favorable reconsideration of the application, in view of the newly amended claims and the following remarks, is therefore respectfully requested.

As an initial matter, Applicant note that the claims have been amended to remove the phrase "subject to a deficiency in a user" and replaced to "*active ingredients added to the beverage in an amount effective to increase nutritional constituents in the user*." Thus, in view of the amendment to the claims to more particularly point out and distinctly claim the subject matter which Applicant regards as the invention, Applicant hereby respectfully requests that the Examiner withdraw the rejection of claims 1-22 and 47-61 under 35 U.S.C. 112, second paragraph, as being indefinite.

Claim Rejections – 35 U.S.C. § 102(b)

In response to the rejection of claims 1-22, 47-50 and 54 as being anticipated by Hack, Applicant respectfully asserts that the defense of anticipation is improper because the prior art reference does not identically disclose each and every element or feature of the claimed invention, as specified, in the newly amended claims. MPEP §2131; *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631 (Fed. Cir. 1987). In this manner, independent claim 1 (and, subsequently, dependent claims 2-6, 8, 9, 12-14, and 16-22) has been amended to make clear that the active ingredients that are added to the beverage include Vitamin B1, Vitamin B6, Vitamin B9, and Vitamin C. Similarly, independent claim 47 (and, subsequently, dependent claims 48-53 and 55-59) has been amended to make clear that the active ingredients that are added to the beverage include Vitamin B1, Vitamin B6, Vitamin B9, Vitamin C, and magnesium. In addition, independent claim 62 (and, subsequently, dependent claims 63 and 64) has been added to make clear that the active ingredients added to the beverage include Vitamin B1 in an amount between about 0.14 mg and about 0.28 mg, Vitamin B6 in an amount between about 0.22 mg and about 0.44 mg, and Vitamin B9 in an amount between about 0.04 mg and about 0.08 mg.

Since Hack does not disclose or teach the inclusion of Vitamin B9 (folic acid) or magnesium as part of the active ingredients, Hack does not identically disclose each and every element or feature of Applicant's claims, as amended. It is respectfully submitted, therefore, that claims 1-22, 47-50 and 54, as amended, overcome the rejection under 35 U.S.C. 102(b).

In response to the rejection of claims 1-22, 47-52, 54-59 and 61 as being anticipated by Donhowe, Applicant respectfully asserts that the defense of anticipation is likewise improper because the prior art reference does not identically disclose each and every element or feature of the claimed invention, as specified, in the newly amended claims.

Independent claim 1 (and, subsequently, dependent claims 2-6, 8, 9, 12-14, and 16-22) has now been amended to make clear that the active ingredients that are added to the beverage include Vitamin B1, Vitamin B6, Vitamin B9, and Vitamin C. Similarly, independent claim 47 (and, subsequently, dependent claims 48-53 and 55-59) has been amended to make clear that the active ingredients that are added to the beverage include Vitamin B1, Vitamin B6, Vitamin B9, Vitamin C, and magnesium. In addition, independent claim 62 (and, subsequently, dependent claims 63 and 64) has been added to make clear that the active ingredients added to the beverage include Vitamin B1 in an amount between about 0.14 mg and about 0.28 mg, Vitamin B6 in an amount between about 0.22 mg and about 0.44 mg, and Vitamin B9 in an amount between about 0.04 mg and about 0.08 mg.

Since Donhowe does not disclose or teach the inclusion of Vitamin B9 (folic acid) or magnesium as part of the active ingredients, Donhowe does not identically disclose each and every element or feature of Applicant's claims, as amended. It is respectfully submitted, therefore, that claims 1-22, 47-50 and 54, as amended, overcome the rejection under 35 U.S.C. 102(b).

Applicants again respectfully point out that a defense of anticipation is improper when the cited references fail to identically disclose every element and feature of the invention, as recited in the claims. As shown above, the teachings of Hack and Donhowe fail to identically disclose each and every element of Applicants' invention. Applicant therefore respectfully contends that the rejections are improper and requests that the 35 U.S.C. 102(b) rejections be withdrawn.

Claim Rejection – 35 U.S.C. §103(a)

Turning now to the rejections of claims 51-53 under 35 U.S.C. 103(a) as being unpatentable over Hack and claims 53 and 60 as being unpatentable over Donhowe, Applicant asserts that a *prima*

facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art. Whereas, the mere fact that the prior art may be modified in the manner suggested by the Examiner neither makes the modification *prima facie* obvious nor obvious unless the prior art suggested the desirability of the modification. Moreover, the Examiner is required to provide clear articulation of the reason(s) why the claimed invention would have been obvious. *See* MPEP 2143.

In the present case, there is no teaching in any of the cited references or combining of the references to obtain a beverage having added active ingredients including: (1) Vitamin B1, Vitamin B6, Vitamin B9, and Vitamin C; (2) Vitamin B1, Vitamin B6, Vitamin B9, Vitamin C, and magnesium; or (3) Vitamin B1 in an amount between about 0.14 mg and about 0.28 mg, Vitamin B6 in an amount between about 0.22 mg and about 0.44 mg, and Vitamin B9 in an amount between about 0.04 mg and about 0.08 mg. Although the prior art discloses some elements of Applicant's invention, the mere reading of the references would not lead one with ordinary skill in the art to arrive at Applicant's invention. It is clear from studying the cited references relied upon by the Examiner that both Hack and Donhowe do *not* disclose or teach the addition of Vitamin B9 (folic acid) and/or magnesium as part of the active ingredients added to the beverage in an amount effective to increase the nutritional constituents in the user exhibiting physical dependency on the beverage. In view of the foregoing, the Examiner's case of *prima facie* obviousness is respectfully traversed.

In view of the foregoing, Applicants respectfully assert that claims 1-6, 8, 9, 12-14, 16-22, 47-53, 55-59 and 62-64 are in condition for immediate allowance. In the event that the Examiner finds any remaining impediment to the prompt allowance of any of these claims, which could be

clarified in a telephone conference, the examiner is respectfully urged to initiate the same with the undersigned.

DATED this 19th day of May, 2008.

Respectfully submitted,

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